

### **Section 3.06 Accessory Dwelling Units**

#### **(a) Purpose and Intent**

The purpose and intent of permitting Accessory Dwelling Units is to allow a separate living area within and as part of a single family home to:

- (i) Enable family members who choose to live in close proximity, but separate from other family members, to remain within the family environment;
- (ii) Provide homeowners with the ability to care for a family member while keeping a separate living area;
- (iii) Provide housing units for individuals hired to provide medical assistance, custodial care, or child care for the occupant(s) of the primary dwelling;
- (iv) Provide more opportunities to allow Town of Mendon residents to remain in the community;
- (v) Provide more opportunities to allow Town of Mendon employees to live in the community;
- (vi) Protect stability, property values, and the residential character of a neighborhood by ensuring that Accessory Dwelling Units are only allowed in single family homes that are owner occupied and that the appearance of the building remains that of a single family residence;
- (vii) Provide affordable rental property in the Town of Mendon that
  - 1) Can be added to the Town's Subsidized Housing Inventory to count toward Mendon's mandated 10% by meeting the regulations of the Local Action Unit Requirements under the Local Initiative Program (LIP) Guidelines of the Department of Housing and Community Development (DHCD) for Accessory Apartments and requirements of M.G.L Chapter 40B, Sections 20-23;
  - 2) Will create opportunities for homeowners to rent Affordable Accessory Apartments to non-family tenants and generate income; and
- (viii) Will make it possible for the Town to monitor all such additions for code compliance and safety.

#### **(b) Definitions**

- (i) **Family Accessory Dwelling Unit.** A self-contained housekeeping unit of limited size incorporated within a single family dwelling unit that is clearly a subordinate part of the single family dwelling.
- (ii) **Affordable Accessory Dwelling Units (Use Restricted).** An Accessory Dwelling Unit designated for households earning at or below 80% of the Area Median Income, carrying a use restriction ensuring the unit's affordability to said households, using affirmative marketing and outreach to households in need and following the Local Action Unit Requirements for Accessory Apartments.
- (iii) **Local Initiative Program.** A program administered by the Massachusetts Department of Housing and Community Development (DHCD) to develop and implement local housing initiatives to produce low and moderate income housing, pursuant to state regulations which may be amended from time to time. The Local Action Unit component of this program provides guidelines for affordable Accessory Dwelling Units.

- (iv) Family Member. A parent, a son, a daughter, an uncle, an aunt, a niece, a nephew, a grandparent, and/or a sibling. Family Accessory Dwelling Units shall be rented only to Family Members of the owner of the Primary Residence. Use restricted Accessory Dwelling Units shall not be rented to Family Members of the owner of the Primary Residence.
  - (v) Primary Residence. A dwelling where the owner-occupant has a true, fixed, and permanent home and principal establishment, and occupies it for a major portion of a calendar year, except for bona-fide temporary absences.
  - (vi) Single Family Dwelling. A detached building intended and designed to be occupied by a single family.
  - vii) Subsidized Housing Inventory (SHI). A list maintained by DHCD of each community's stock of low to moderate income units that count towards the mandated 10% affordable housing goal for that community as prescribed by M.G.L. Chapter 40B.
  - (viii) Regulatory Agreement. A use restriction, or other legal instrument, acceptable in form and substance to the Town of Mendon and consistent with DHCD Guidelines.
- (c) Standards and Requirements for both Family and Affordable Accessory Dwelling Units
- (i) Family and Affordable Accessory Dwelling Units shall be allowed by right. Accessory Dwelling Units that do not comply with the criteria set forth herein may be permitted by the Board of Appeals upon the issuance of a special permit in accordance with Section 1.06 of the Town of Mendon Zoning By-Laws.
  - (ii) Only one Accessory Dwelling Unit may be created on a lot.
  - (iii) Prior to issuance of a permit, a plan showing the proposed changes to the building or site must be submitted to the Building Inspector.
  - (iv) The unit will be a separate housekeeping unit containing both kitchen and bath.
  - (v) The Accessory Dwelling Unit shall not exceed 800 square feet.
  - (vi) The construction of any Accessory Dwelling Unit must be in conformity with the State Building Code, Title V of the State Sanitary Code, and any other local bylaws and regulations. A septic system sized for the number of bedrooms must be approved by the Board of Health.
  - (vii) The appearance of the building shall remain that of a one family residence.
  - (viii) The maximum number of bedrooms shall be one and the maximum number of occupants shall be two.
  - (ix) There must be a connecting door between units within a single family dwelling.
  - (x) Any new separate outside entrance serving an Accessory Dwelling Unit shall be located on the side or in the rear of the building.
  - (xi) The footprint of the home or detached structure shall not be enlarged.
  - (xii) There shall be one electric service, one source of potable water, and the

Accessory Dwelling Unit shall not have a separate address. An Accessory Dwelling Unit is not considered to be a two family dwelling unit.

- (xiii) There shall be no additional driveway to serve the Accessory Dwelling Unit.
- (xiv) There shall be two additional parking spaces located to the side or rear of the the property.
- (xv) The owner(s) of the residence in which the Accessory Dwelling Unit is created must continue to occupy the Primary Residence, except for bona fide temporary absences or a special permit from the Board of Appeals.
- (xvi) In the case of disabled and handicapped persons with limited mobility, the Building Inspector may allow reasonable deviation from the stated standards, where necessary, to install features that facilitate access and mobility.

(d) Family Accessory Dwelling Units

In addition to Section (c) above, Family Accessory Dwelling Units shall comply with the following:

- (i) Prior to the issuance of a permit, the owner(s) must send a notarized letter to the Building Inspector stating that:
  - 1) The owner will occupy the Primary Residence except for bona fide temporary absences, and the name and relationship of the family member who will occupy the Accessory Dwelling Unit; or
  - 2) That the occupant is an individual hired to provide medical assistance, custodial care, or child care for the occupant(s) of the primary residence; and
  - 3) That the owner-occupant shall annually re-certify the status of occupants and family status with the Building Inspector.
- (ii) When a dwelling or structure, which has received a permit for an Accessory Dwelling Unit is sold, the new owner(s), if they wish to continue to exercise the permit must, within 45 days of the sale, apply to the Building Inspector for a new permit.

(e) Grandfathering

- (i) Family Accessory Dwelling Units in existence at the time of the passage of this By-Law shall be exempt from the provisions of this By-Law. Upon the sale of the property, the Accessory Dwelling Unit shall be permitted as long as it meets code requirements and is in compliance with Section (c) (i) through (xvi) as applicable. The requirement in (c) (v) shall not apply.
- (ii) A homeowner who has a Family Accessory Dwelling Unit in existence at the time of passage of this By-Law shall not be subject to fines for code violations, if any, should the homeowner desire to take advantage of the opportunity to rent to non-family and agree to the standards and requirements set forth in Sections (c) and (f) of this By-Law.

(f) Affordable Accessory Dwelling Units

The purpose of this section is to satisfy a need for more rental units in the Town of Mendon that meet the regulations of the M.G.L. Chapter 40B, sections 20-23, 760 CMR

56.00 and the Local Initiative Program for Accessory Apartments and provide a means of renting Accessory Dwelling Units that are not used by family members.

- (i) In addition to being incorporated into a single family house, an Affordable Accessory Dwelling Unit may be allowed in an existing detached structure such as a barn or garage. This structure shall not be enlarged or extended in connection with the construction or modification of an accessory apartment, except for minimal additions necessary to comply with building, safety or health codes or to create or enclose an entry way or stairway.
- (ii) A tenant must be a Citizen of the United States or have an Eligible Immigration Status.
- (iii) The applicant shall meet the following requirements set forth in M.G.L. Chapter 40B, sections 20-23, 760 CMR 56.00 and the Local Initiative Program Guidelines in effect on the date of the application for an Affordable Accessory Apartment special permit:
  - 1) The owner(s) agree to execute a Regulatory Agreement for Affordable Accessory Apartment Projects and a Declaration of Restrictive Covenants.
  - 2) The Regulatory Agreement and Declaration of Restrictive Covenants, as a portion of its provisions, shall include the following:
    - a) A minimum term of 15 years but, should the property be sold prior to the end of that 15 year term, the owner of the property may transfer the agreement (use restriction) to the new owner. Otherwise, said agreement shall be terminated and revoked upon the sale of the property. Said agreement, for purposes of this subsection, shall not include: a mortgage deed to secure the repayment of a loan; or an inter-spousal transfer for nominal consideration where the transferor retains at least a fifty percent (50%) ownership interest in the property; or a transfer to a trust for nominal consideration where the owner holds at least a fifty percent beneficial interest in the property. DHCD shall be notified of the termination of the agreement and the unit shall be removed from the SHI.
    - b) The agreement is subject to state regulatory requirements for Affordable Accessory Apartments relative to pricing, affirmative fair housing marketing plan, and annual oversight by the Town or its designee;
    - c) An owner must rent the Affordable (Deed Restricted) Accessory Apartment to income qualified tenants selected through an open process to be established in accordance with the DHCD Local Initiative Program Guidelines for Local Action Units that are specific to Affordable Accessory Apartments; and
    - d) The monthly rent shall not exceed the maximum affordable rent as prescribed in said Guidelines.

- 3) Said Regulatory Agreement with the Town shall provide that the owner(s) shall execute and record in the Worcester District Registry of Deeds forthwith said Regulatory Agreement and Declaration of Covenants.
- 4) Said Regulatory Agreement with the Town shall provide that the lease may be terminated at any time, but in all cases the owner must provide an existing tenant at least sixty (60) days prior written notice that a lease will not be renewed. If the owner desires to terminate the Regulatory Agreement, the owner shall file a notice of cancellation with the Registry of Deeds.

(g) Assistance to Home Owners:

- (i) The Town of Mendon Affordable Housing Coordinator will assist the property owner in navigating through the affordability requirements established in this By-Law.
- (ii) The Town of Mendon Affordable Housing Coordinator will also assist property owners in locating available municipal or state funds for rehabilitating and upgrading the properties for the purpose of incorporating an Affordable Accessory Dwelling Units identified under this By-Law.
- (iii) The Town will waive fees for the inspection and monitoring of the affordable accessory apartments that are identified under this By-Law.
- (iv) To the extent allowable by law, the negative effect entailed by the use restriction involved will be reflected in the property tax assessment.

(h) The Local Project Administrator to administer Affordable Accessory Dwelling Units, as required by the Department of Housing and Community Development's Local Initiative Program for Accessory Apartments, shall be the Town of Mendon Affordable Housing Coordinator.

(i) Local Preference

- (i) To the extent practicable, Mendon residents over the age of 55, residents whose spouse, son, daughter, father, mother, brother, sister, grandfather or grandmother lives in Mendon, or Town of Mendon municipal or school department employees shall be given local preference for the maximum number of the Affordable Dwelling Units created in any development subject to this By-Law that is permitted under DHCD Guidelines (currently 70%).
- (ii) These restrictions shall remain enforce for a period of four (4) months from the date of the first offering of the rental of a particular Affordable Accessory Dwelling Unit to the public. The Town of Mendon or its designee, or the developer, as applicable, shall make a diligent effort to locate eligible renters who meet the above requirements as well as the applicable income requirements.

(j) Penalty and Enforcement

- (i) It shall be the duty of the Building Inspector to administer and enforce the

building code compliance and safety provisions of this By-Law for both Family and Affordable Accessory Dwelling Units. It shall also be the duty of the Building Inspector to administer and enforce the requirements in (d) (i) and (ii) for Family Accessory Dwelling Units.

- (ii) No building shall be changed in use or configuration until the Building Inspector has issued a permit. No building shall be occupied until a Certificate of Occupancy has been issued by the Building Inspector where required.
  - (iii) The Building Inspector shall refuse to issue any permit, which would result in a violation of any provision of this By-Law.
  - (iv) The Building Inspector shall issue a cease and desist order on any work in progress or on the use of any premises, which are in violation of this By-Law.
  - (v) Should the Building Inspector determine that health and/or safety issues exist in an Accessory Dwelling Unit, permitted or not, the owner of a single family residence and associated Accessory Dwelling Unit who does not bring his or her premises into compliance with this By- Law shall be liable for a fine of not more than \$300.00 per day.
  - (vi) The Town reserves the right to monitor changes in ownership or occupancy for compliance with this By-Law.
- (k) Severability
- If any provision of this By-Law is held invalid by a court of competent jurisdiction, the remainder of the By-Law shall not be affected thereby. The invalidity of any section or sections or parts of this By-Law shall not affect the validity of the remainder of the Town's Zoning By-Law.